



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

MUNSCH, HARDT, KOPF & HARR, P.C.
INTELLECTUAL PROPERTY DOCKET CLERK
3800 LINCOLN PLAZA
500N AKARD STREET
DALLAS, TX 75201

COPY MAILED

APR 07 2008

OFFICE OF PETITIONS

In re Application of :
Joel MARQUART et al :
Application No. 10/772,083 : **DECISION ON PETITION**
Filed: February 4, 2004 :
Attorney Docket No. 4204.29-1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 9, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application is being revived solely for purposes of continuity.

The application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Non-provisional Application, mailed May 5, 2004. The Notice set a period for reply of two (2) months from the mail date of the Notice. A five-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 6, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. *See* MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item (1).

As to item (1), still missing is the oath or declaration. While an oath was filed concurrently with the petition, it is ineffective for the instant application. The submitted oath referred to another application serial number 11/006,481, which is a child application of the instant application number 10/772,083. As such, a properly executed oath or declaration is still lacking.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant of 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

While a revocation of power of attorney with new power of attorney and change of correspondence address was concurrently filed with the petition, it is ineffective for the instant application because the application number referred to therein is 11/006,481, the child case, and not the instant parent case 10/772,083.

Any renewed petition may be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450


By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to Quyen Leung at (571) 272-6051 or in her absence, the undersigned at (571) 272-7099.


David A. Buccia
Petitions Examiner
Office of Petitions

Cc:
Fay Sharpe
1100 Superior Ave Ste 700
Cleveland, OH 44114